

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANT: M&W Ranch LLC

OBJECTORS: M&W Ranch LLC; United States of America
(Bureau of Land Management)

CASE 40A-0360-R-2022

40A 205261-00

40A 205266-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claims 40A 205261-00 and 40A 205266-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received issue remarks. Issue remarks result from Department of Natural Resources and

Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

These claims each received an objection filed by the United States of America (Bureau of Land Management). Claim 40A 205266-00 also received an objection filed by Claimant M&W Ranch LLC.

The Court consolidated these claims into Water Court Case 40A-0360-R-2022 on May 19, 2022. The consolidation order set a settlement deadline by which the parties were to file settlement documents or status reports. M&W Ranch LLC filed a response on August 15, 2022. The United States also filed a response on the same day.

FINDINGS OF FACT

1. Claim 40A 205261-00 appeared with the following issue remark:

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
2. Claim 40A 205266-00 appeared with the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 25.00 GPM PER ACRE.

THE TIMELY FILED OBJECTION OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION, PLACE OF USE, AND PERIOD OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWSW SEC 14 TWP 6N RGE 13E WHEATLAND COUNTY.

3. The United States objected to the place of use and maximum acres of both above-captioned claims. The United States asserted that the place of use of both claims incorrectly includes federal land.

United States' Objections

4. To resolve the United States' objections, M&W Ranch LLC requests the Court modify the place of use of these claims as follows:

40A 205261-00

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		S 2 S W	12	6 N	13 E	W H E A T L A N D
2	5.00		N 2 N 2 N W	13	6 N	13 E	W H E A T L A N D
3	10.00		N 2	14	6 N	13 E	W H E A T L A N D
3	10.00		S 2 N W	14	6 N	13 E	W H E A T L A N D
4	20.00		N E	14	6 N	13 E	W H E A T L A N D
Total: 65.00							

40A 205266-00

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		N 2	14	6 N	13 E	W H E A T L A N D
1	10.00		S 2 N W	14	6 N	13 E	W H E A T L A N D
2	20.00		N E	14	6 N	13 E	W H E A T L A N D
Total: 30.00							

5. Claimant states that the 30 acres in the N2 of Section 14, T6N, R13E claimed by Claim 40A 205261-00 is the same parcel as the 25 acres in the N2 of Section 14, T6N, R13E claimed by Claim 40A 205266-00. These rights are supplemental.

6. The United States indicates in its August 15, 2022 response that it agrees with the proposed place of use changes and that if such changes are made the objections will be resolved.

7. The place of use of Claims 40A 205261-00 and 40A 205266-00 should be described as proposed by Claimant.

Self-Objection to Claim 40A 205266-00 and Issue Remarks

8. Regarding its objection to Claim 40A 205266-00, Claimant states the following:

Claim 40A 205266-00 was previously adjudicated in Case 40A-264. In that case, the Water Master ordered the Period of Use for Claim 40A 205266-00 be March 1 to November 19. FOF 44, Master's Report filed March 8, 2011, attached as Exhibit E. Because these are direct flow rights, the Period of Diversion should match the Period of Use. *See Id.*, at COL 14. These changes were not reflected in the Preliminary Decree. M&W respectfully requests this Court to amend the Period of Diversion and Period of Use elements to reflect the Order in Case 40A-264 for Claim 40A 205266-00. *See Proposed Revised Abstract*, attached as Exhibit B.

9. The period of diversion and period of use for Claim 40A 205266-00 should be described as March 1 to November 19.

10. Claimant states that the flow rate issue remark on Claim 40A 205266-00 does not overcome the prima facie status of the claim.

11. Claimant indicates agreement with the point of diversion issue remark on Claim 40A 205266-00. Both Claim 40A 205261-00 and 40A 205266-00 claim the Sedgwick Ditch. The Sedgwick Ditch point of diversion is located in the NENWSW of Section 14, T6N, R13E.

12. The point of diversion of Claim 40A 205266-00 should be NENWSW of Section 14, T6N, R13E.

13. The issue remarks should be removed from the above-captioned claims.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the

claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1, W. R. Adj. R. An existing water right is a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Rule 2(a)(22), W.R.C.E.R.

5. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the relevant claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove the issue remarks from the above-captioned claims.

3. The flow rate of Claim 40A 205266-00 may be decreed without substantive modifications because the issue remark and information behind the remark does not overcome the prima facie status of the claim.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Note: Service List Updated 1-25-23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205261-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

Priority Date: OCTOBER 26, 1889

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 2.38 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 65.00

Source Name: LEBO CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSW	14	6N	13E	WHEATLAND

Period of Diversion: MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: SEDGWICK DITCH

Period of Use: MAY 15 TO SEPTEMBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		S2SW	12	6N	13E	WHEATLAND
2	5.00		N2N2NW	13	6N	13E	WHEATLAND
3	10.00		S2NW	14	6N	13E	WHEATLAND
4	20.00		NE	14	6N	13E	WHEATLAND
Total:	65.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

205261-00

205266-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205266-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

Priority Date: MAY 15, 1890

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.40 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 30.00

Source Name: LEBO CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSW	14	6N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: SEDGWICK DITCH

***Period of Use:** MARCH 1 TO NOVEMBER 19

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		S2NW	14	6N	13E	WHEATLAND
2	20.00		NE	14	6N	13E	WHEATLAND
Total:	30.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

205261-00

205266-00

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION:
"FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL
BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE
DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S
CLAIM FILES.